

RECEIPT # 404264
 AMOUNT \$ 150.-
 SUMMONS ISSUED ✓
 LOCAL RULE 4.1 ✓
 WAIVER FORM ✓
 MCF ISSUED ✓
 BY DPTY. CLK. S. Jones
 DATE 2-10-04

UNITED STATES DISTRICT COURT

FILED
IN CLERKS OFFICE

DISTRICT OF MASSACHUSETTS

2004 FEB 10 P 12:41

CENTRAL SECTION

U.S. DISTRICT COURT
DISTRICT OF MASS.

GAIL SHAW,
 Plaintiff,

V.

AETNA LIFE INSURANCE COMPANY,
 Defendant.

CIVIL ACTION NO.

04-40020-1234**COMPLAINT****I. INTRODUCTION**

This action involves the Defendant, Aetna Life Insurance Company's ("Aetna's") wrongful denial of long term disability benefits to the Plaintiff, Gail Shaw ("Ms. Shaw") under an employee benefit plan of Verizon, formerly Bell Atlantic and NYNEX, while Aetna was the plan administrator of said plan. This action is brought pursuant to 29 U.S.C. § 1132 and is governed by the Employee Retirement and Security Income Act of 1974 ("ERISA"), as amended, and set forth at 29 U.S.C. § 1001 et seq.

II. PARTIES

1. The Plaintiff, Ms. Shaw is an individual residing at 184 Popple Camp Road, Petersham, MA 01366
2. The Defendant, Aetna is an insurance corporation, organized under the laws of Connecticut, with a usual address at 151 Farmington Avenue, Hartford, CT 06156-2970, doing business in Massachusetts, and was the plan administrator of the long term disability plan of

Verizon for employees located in Massachusetts at all relevant times of the allegations of this complaint.

III. JURISDICTION

3. This court has jurisdiction of this action because it involves a federal question under the Employee Retirement and Security Income Act of 1974 (ERISA), as amended, and set forth at 29 U.S.C. § 1132 (e) and (f). Jurisdiction is, therefore, conferred on this court by 28 U.S.C. § 1331.

4. Venue is appropriate in this court because Ms. Shaw is a resident of Worcester County, Massachusetts and the acts complained of including the breach of the terms of the long term disability plan and the administration of the plan occurred in Worcester County, Massachusetts.

IV. ALLEGATIONS

5. Ms. Shaw was employed by Verizon, formerly Bell Atlantic and NYNEX for about thirteen (13) years when she became unable to work on or about November 2, 1999 due to fibromyalgia.

6. Initially, Ms. Shaw received short-term disability benefits from November 2, 1999 through November 6, 2000 under Bell Atlantic's Sickness and Accident Disability Plan for Non-Management Employees.

7. Verizon notified Ms. Shaw that she was terminated as of November 7, 2000 and also informed her that she was eligible to apply for long-term disability benefits under the NYNEX Long Term Disability Plan for Non-Salaried Employees (the "Plan") when her short-term disability benefits were exhausted. At that time, Aetna was the administrator of the Plan.

8. At the time of her separation from Verizon, Ms. Shaw was a directory assistance operator, and a member of the union.

9. Ms. Shaw made an application under the Plan and Aetna approved her claim for long-term disability benefits in or about October 2000. In addition, Aetna advised Ms. Shaw that she would probably qualify for Social Security Disability Income ("SSDI") and urged her to apply for those benefits. Aetna referred her file to Allsup, Inc., a company that provides representation for Social Security claims.

10. Ms. Shaw's claim for SSDI was also approved by the Social Security Administration on March 16, 2001. As a result of the approval of her SSDI claim, Aetna reduced her monthly benefits under the "Plan" by offsetting her monthly SSDI from payments made under the Plan. Aetna also received reimbursement of \$5,060.50 for long-term disability benefits provided under the Plan for which she also retroactively received SSDI once her claim was approved.

11. Thereafter, beginning on May 2, 2002, Aetna arbitrarily and capriciously denied Ms. Shaw any further long-term disability benefits under the Plan.

12. At all relevant times from Aetna's approval of her claim until the present time and for the indefinite future Ms. Shaw has continued to be and will continue to be totally disabled as a result of fibromyalgia and any other medical conditions associated therewith or in combination therewith.

13. On May 23, 2002, Ms. Shaw appealed Aetna's wrongful denial of long-term disability benefits under the Plan. In a letter received on October 15, 2002, Aetna sustained its original denial of benefits. In that letter, Aetna advised Ms. Shaw, without providing the

limitations period, she could sue under “Section 502(a) of ERISA.” Ms. Shaw exhausted all of her administrative remedies.

14. On September 21, 2001 and again on May 23, 2002, Ms. Shaw, through her legal counsel requested, in writing, a copy of the summary plan description of the Plan from Aetna. To date, neither Ms. Shaw nor her legal counsel has received a copy of the summary plan description of the Plan in accordance with those requests and the law of ERISA.

COUNT I – 29 U.S.C. § 1132 (a)

15. Plaintiff realleges and repeats the allegations contained in paragraphs 1 through 14 above.

16. Aetna arbitrarily, capriciously and wrongfully denied Ms. Shaw long-term disability benefits under the Plan from May 2, 2002 and continuing, and is liable to pay her all such benefits wrongfully denied.

COUNT II – 29 U.S.C. § 1132 (c)

17. Plaintiff realleges and repeats the allegations contained in paragraphs 1 through 16 above.

18. Aetna has failed to provide Ms. Shaw the summary plan description of said Plan from September 21, 2001 and continuing, and is liable to pay her at the rate of \$100.00 per day for its failure or refusal to provide the summary plan description to Ms. Shaw or her legal counsel.

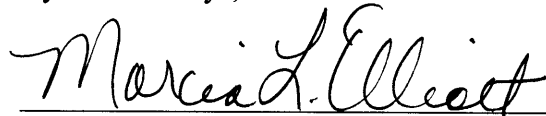
V. RELIEF REQUESTED

WHEREFORE, the Plaintiff requests the Court issue a declaratory judgment that she is entitled to long-term disability benefits under the Plan; that the Court determined the nature and the amount of the benefits wrongfully denied the Plaintiff; that the Court order the Defendant to

provide a copy of the summary plan description to the Plaintiff or her legal counsel; and that the Court enter an order for damages for Aetna's refusal or failure to provide said summary plan description; that the Court enter judgment in favor of the Plaintiff and award her interest and attorneys' fees on all damages she is awarded and such other relief as the Court deems just and fair.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

GAIL SHAW,
The Plaintiff,
By her attorneys,

A handwritten signature in cursive script, reading "Marcia L. Elliott". The signature is written in dark ink and is positioned above a horizontal line.

Marcia L. Elliott, Esq. (BBO# 564291)
John M. Flick, Esq. (BBO# 652169)
Elliott Law Office, P.C.
307 Central Street
Gardner, MA 01440
(978) 632-7948

Dated: February 9, 2004

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gail Shaw

DEFENDANTS

Aetna Life Insurance Company

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Marcia L. Elliott
Elliott Law Office, P.C.
307 Central Street, Gardner, MA

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This action involves the wrongful denial of long-term disability benefits and is governed by the Employee Retirement & Security Act of 1974 (ERISA).

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2-9-2004

SIGNATURE OF ATTORNEY OF RECORD

Marcia L. Elliott

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

04-40020-1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____
Gail Shaw v. Aetna Life Insurance Company
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☐
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☒ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Marcia L. ElliottADDRESS Elliott Law Office, P.C., 307 Central Street, Gardner, MA 01440TELEPHONE NO. (978) 632-7948